



UNIVERSITY OF TORONTO, FACULTY OF LAW

SECURED TRANSACTIONS (318H1S)

SPRING TERM 2004-05

COURSE OUTLINE AND READING GUIDE

DAVID L. DENOMME

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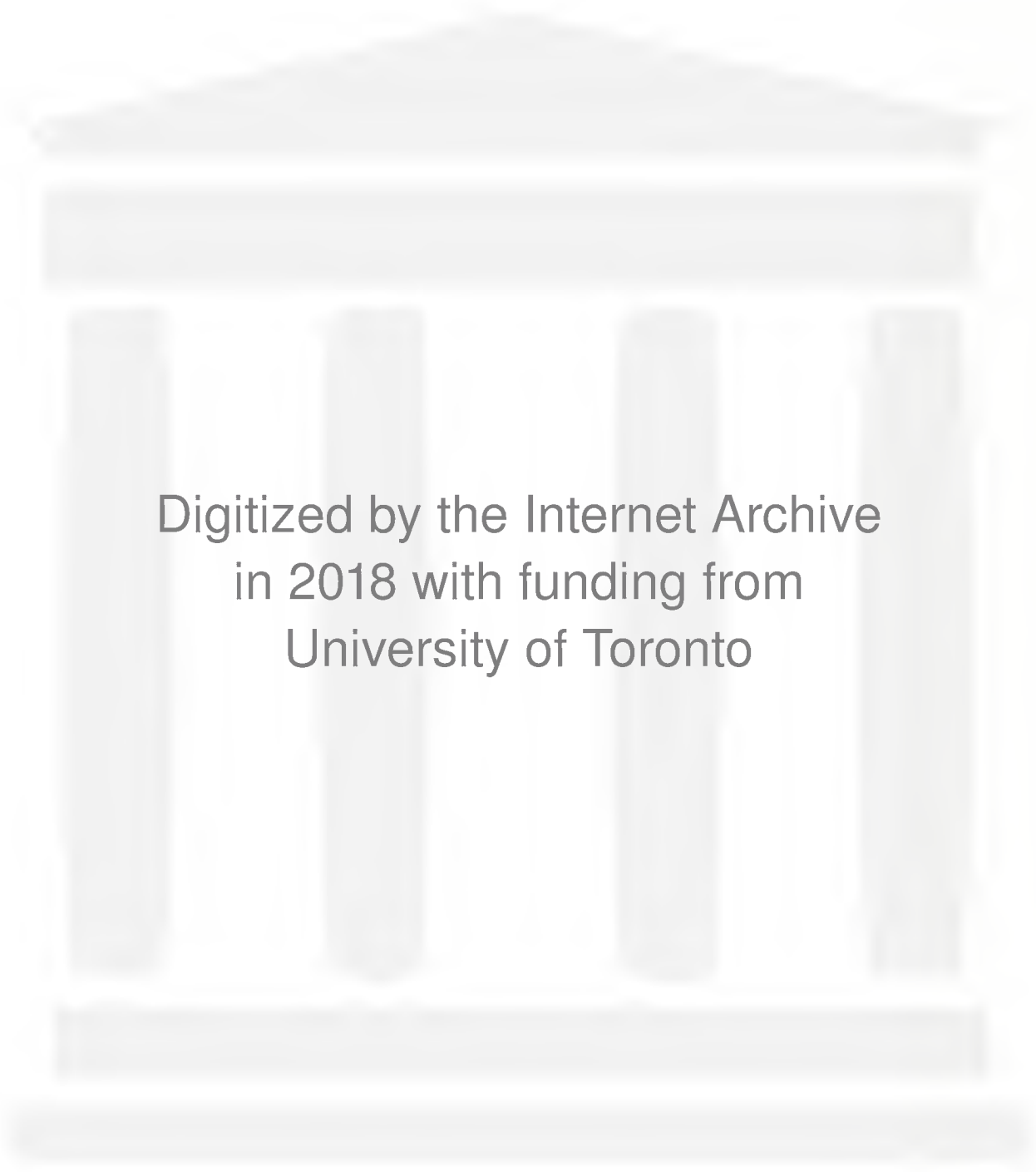
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LEGEND

APPSA:	<i>Personal Property Security Act</i> , R.S.A., c.P-7 [text in Supp, at p.383 – for reference only]
CB:	Ziegel, Cuming and Duggan, <i>Secured Transactions in Personal Property and Suretyships</i> (4 th ed.) (Emond Montgomery, Toronto, 2003)
OPPSA:	<i>Personal Property Security Act</i> , R.S.O. 1990, c. P.10 (text in Supp)
PPSL Report:	Canadian Bar Association – Ontario submission to Minister of Consumer & Commercial Relations concerning the OPPSA, 1998 (text in Supp)
SOGA:	<i>Sale of Goods Act</i> , R.S.O. 1990, c. S.1 (text in Supp)
Supp:	<i>Commercial Law Statutory and Supplementary Materials</i> , Supplement to CB
Z&D:	Ziegel and Denomme, <i>The Ontario Personal Property Security Act: Commentary and Analysis</i> (2 nd ed.) (Butterworths, Toronto, 2000) [note: all references to Z&D are <u>optional</u> reading only]

TOPIC 1: INTRODUCTION

Generally – Supp (*i.e.* pp. 215-231, text of SOGA); CB c.1 (pp. 1-45)

1. Introduction to the course

- ground rules
- structure of course and classes
- comments on readings
- why you should care

2. *Sale of Goods Act*: the impossibly quick tour

- history
- role
- basis; “title” a/k/a “property”
- structure of SOGA
- “sale” vs. “agreement to sell”; SOGA s.2 and definitions of “seller” and “buyer”
- when sale occurs: SOGA ss.2(3) and 2(4)
- when property passes: SOGA ss.17-19
- the “*nemo dat*” rule and some exceptions: SOGA ss.22-25
- the position of the unpaid seller: SOGA Part IV

3. The function of credit; unsecured and secured credit distinguished

CB 1-4

4. Pre-PPSA forms of transaction

CB 5-10

- mortgage
- pledge
- lien (charge)
- conditional sale
- lease

5. Issues in secured transactions law

CB 5

- formal requirements
- registration
- rights of parties between themselves
- third party rights
- default and enforcement

6. The OPPSA and other laws

CB 16-23
Z&D pp. lxxvi – lxxvii (Introduction to First Edition); lv – lxiii (Introduction to Second Edition)

(a) Origins of the OPPSA (UCC, Article 9)

(b) The Western model PPSA

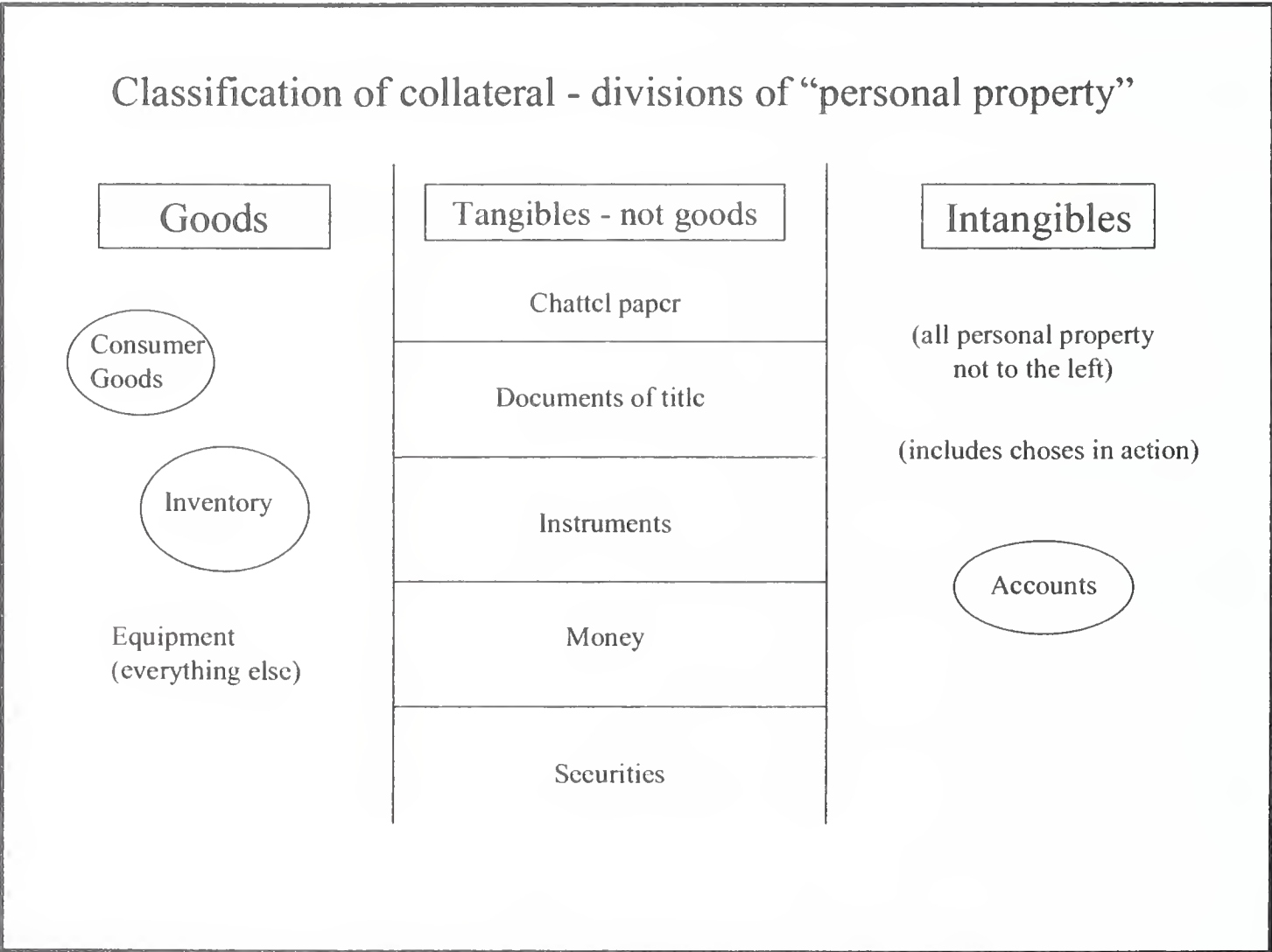
(c) Bank Act, s. 427 (see further, Topic 12)

7. Outline of OPPSA

CB 41-43

8. Personal property and its classifications

OPPSA, s. 1(1) (definitions below)
Z&D pp. 6-46 (commentaries on definitions below)
see chart below in lieu of chart on CB 44



(a) “Personal Property”

(b) “Goods”

- (i) “consumer goods”
- (ii) “inventory”
- (iii) “equipment”

(c) Non-goods tangible personal property

- (i) “chattel paper”
- (ii) “documents of title”
- (iii) “instruments”
- (iv) “money”
- (v) “securities”

(d) “Intangibles”

- (i) “accounts”
- (ii) other types of intangibles (choses in action, IP rights, etc.)

(e) Brief introduction of three other key concepts (we will return)

- (i) “security interest”
- (ii) “security agreement”
- (iii) “collateral”

9. Proceeds collateral

OPPSA, ss 1(1), 25(1)
Z&D §1.21 (pp. 24-25); §25.2 (pp.189-190)

10. Security interests in circulating assets

CB 10-12

(a) The US position (pre-Article 9)

(b) The English position

(c) The Article 9 and Canadian PPSA position

11. Security interests and bankruptcy

12. The secured lending puzzle

- Schwartz, “Security Interests and Bankruptcy Priorities: A Review of Current Theories”, CB 23-30 and notes 30-32
- Bebchuk and Fried, “The Uneasy Case for the Priority of Secured Claims in Bankruptcy: Further Thoughts and a Reply to Critics” CB 32-39 and notes 40-41

TOPIC 2: THE SCOPE OF THE OPPSA

Generally – CB c.2 (pp. 47-75)

1. Security transactions

OPPSA, s. 2

Z&D §2.1 (pp. 48-49)

Map of this discussion based on s.2 of OPPSA and subjects below – [(x)] refers to those subject headings:

Subject to s.4(1), PPSA applies to:

- (a) - “transactions” [(a)]
 - without regard to form or to title [(c)]
 - that in substance create a security interest, i.e. interest in personal property [(b)]
 - including, for sure, the listed transactions [(c)]
 - including assignments, leases, consignments only if they secure payment/performance of obligation [(d)] and [(e)]
- and to
- (b) - transfers of accounts or chattel paper even if they don't secure payment/performance of an obligation [(e)]

(a) Transaction

OPPSA, s. 1(1) “security agreement”, “security interest”

Z&D §2.3 (pp 71-72)

- *Ellingsen (Trustee of) v. Hallmark Ford Sales Ltd.*, CB 78-87
- *356447 British Columbia Ltd. v. CIBC*, CB 87-92
- *General Publishing Co., Re*, Supp 237

(b) Security interest in “personal property”

OPPSA s.1(1) “personal property” (and recall discussion of classifications in Topic 1, Section 8)

Z&D, pp. 40-41

- *Sugarman v. Duca Community Credit Union*, CB 48-55 (note references to *Bouckhuys*, *Hallahan*, *Foster* and *Bale* cases)

(c) In substance security transactions

OPPSA, s. 2(a)(i)

(d) Security and non-security leases and consignments

OPPSA, s. 2(a)(ii)

Leases

Z&D §2.2.3 (pp.57-63)

CB 55-62, 67-68

- *Crop & Soil Service Inc. v Oxford Leaseway Ltd.*, CB 56-58
- *Adelaide Capital Corp v Integrated Transport Finance Inc.*, CB 58-60

Consignments

Z&D §2.2.4 (pp 63-64)

(e) Assignments

OPPSA, s. 2(a)(ii), 2(b)

Z&D §2.2.5 (pp. 64-69)

CB 67 (first paragraph of V only)

- (i) Absolute assignments and security assignments
- (ii) Assignments with and without recourse
- (iii) Notification and non-notification assignments

2. Exclusions from the scope of the Act

OPPSA, s. 4(1)

Z&D §§4.1-4.11 (pp 78-89)

- *Commercial Credit Corp Ltd. v Harry Shields Ltd*, CB 69-70
- *Re Urman*, CB 71-75

3. Basic terminology

OPPSA s. 1(1) (definitions below)

(a) “Debtor”

Z&D §1.6 (pp.11-14)

(b) “Secured party”

Z&D §1.27 (pp.36-37)

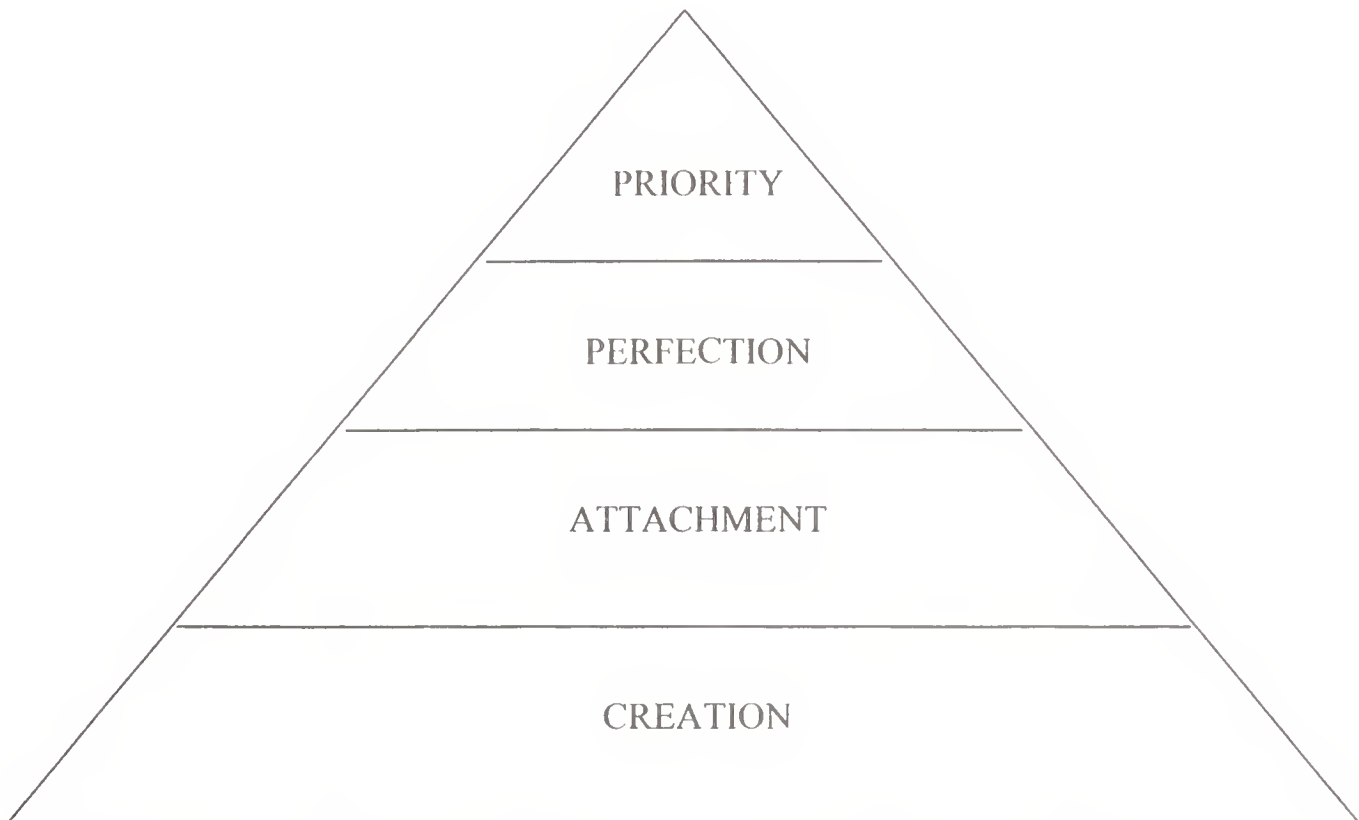
(c) “Collateral”

Z&D §1.4 (p.9)

TOPIC 3: VALIDITY AND ENFORCEABILITY, ATTACHMENT AND PERFECTION

Generally – CB c.3 and c.4 (pp.77-158); also CB c.11 (pp.467-488) and part of c.6 (pp.219-239)

The “pyramid” – creation/attachment/perfection/priority



1. Validity of security agreement

(a) Effectiveness of agreement

OPPSA ss.9(1), 73

CB 77-78

Z&D §§9.1-9.2 (pp. 112-116)

- *Ellingsen*, previously discussed (Topic 2, Section 1(a))

(b) Writing requirements (see further Section 2 (Attachment), below)

OPPSA ss 11(2)(a), 9(2), 9(3)

Z&D §11.3 (pp.122-127); §§9.3-9.4 (pp.117-118)

(i) The function of the writing requirement

(ii) Security agreement signed by debtor

- *Atlas Industries v Federal Business Development Bank*, CB 92-94

(iii) The exception to the writing requirement

- *Re Ayerst and Ayerst*, CB 94-95
- *Re BDO Dunwoody Ltd. and Astral Communications Inc.*, CB 96-97
- *MacEwen Agricentre Inc. v. Bériault*, Supp 241

(c) Copy of security agreement

OPPSA, s.10

2. Attachment

OPPSA s.11

Z&D §§11.1-11.5 (pp. 121-131)

(a) What attachment means

(b) The requirements for attachment

- (i) Agreement
- (ii) Value
- (iii) Debtor has rights in collateral
- (iv) Exception – “unless the parties have agreed to postpone”

(c) After-acquired property

OPPSA, s.12

- *Holroyd v Marshall*, CB 123-125
- *Tailby v Official Receiver*, CB 125-129
- *Joseph v Lyons*, CB 129-130

(d) The floating charge

CB 99-101

Z&D §25.3 (pp 190-194)

- *Access Advertising Management Inc v Servex Computers Inc*, CB 102-105
- *Credit Suisse Canada v 1133 Yonge Street Holdings*, CB 105-115 (trial judgment)

(e) The “all PAAP” security interest and the licence to carry on business

CB 467-468

- *Credit Suisse Canada v 1133 Yonge Street Holdings*, CB 468-472 (appeal judgment)
- *Royal Bank of Canada v Sparrow Electric Corp.*, CB 473-480

(f) Conditional sales and the like; debtor’s “rights in the collateral”

- *Kinetics Technology International Corp. v Fourth National Bank of Tulsa*, CB 116-119
- *R. v. Canadian Imperial Bank of Commerce*, CB 120-122

3. Rights of parties to security agreement

OPPSA, ss 13-18
Z&D, pp 138-155

4. Perfection

(a) Introduction

OPPSA, ss 19, 20, 22, 23
CB 133-134
Z&D, p. 157 (Introduction to Part III)

- *Twyne's Case* 3 Co Rep 80b; 76 ER 809 (Star Chamber, 1601)
- *Dearle v Hall* (1828) 3 Russ 1; 38 ER 475

(b) Perfection by possession

OPPSA, s22
Z&D, §§22.1-22.7 (pp.177-184)

- *Re Raymond Darzinskis*, CB 134-136
- *Sperry Inc v CIBC*, CB 136-141

(c) Perfection by registration

OPPSA, s.23
Z&D, §23.1 (pp. 184-185)

(d) Temporary perfection

OPPSA, s.24
Z&D, §24.1 (p. 186)

(e) Continuity of perfection

OPPSA, s.21
Z&D, §21.1 (pp. 173-176)

(f) Consequences of non-perfection

OPPSA s.20
CB 219-225
Z&D, §§20.1-20.3 (pp. 161-172)

(i) Competing secured parties

(ii) Execution creditors

(iii) Debtor's trustee in bankruptcy

- *Re Giffen*, CB 226-239

(iv) Transferees for value

TOPIC 4: REGISTRATION

Generally – CB c.5 (pp.159-217)

1. Introduction

OPPSA, ss. 41-42
CB 159-163
Z&D, Introduction to Part IV (pp. 337-339), §41.1 (pp. 340-341)

- (a) The function of registration
- (b) Earlier registration statutes and the PPSA reforms
- (c) Debtor’s name index and asset index registration

2. Registration basics

OPPSA, ss. 1(1) “financing statement”, “financing change statement”
OPPSA Regulation, ss.1 “person”, “artificial body”, “motor vehicle”, “vehicle identification number”, 2, 3, 16, 17
Financing statement and financing change statement forms (Supp 186-189)
Z&D §R5.1 (table at pp. 642-643: reproduced below)

- (a) The financing statement
- (b) The name and number requirements
- (c) The financing change statement
 - (i) Amendments
 - (ii) Other types

Purpose of Registration of Financing Change Statement	Regulation Section	Act Section	Designation Letter
Amendment	14, 15	49	A
All purposes other than amendment (including all purposes below)	19	(see below)	(see below)
Renewal	5	52	B
Discharge	10	55	C
Assignment by secured party	7	47	D
Transfer by debtor	8	48	E
Partial discharge	11	55	F
Assignment of security interest in part of collateral by secured party	7	47	G
Transfer of part of collateral by debtor	8	48	H
“Other change” (i.e., subordination or seizure of security interest by sheriff)	12,13	50, s.27(2) <i>Execution Act</i>	J

(d) The “family” concept

(e) The numbering system

Example: a financing statement belonging to family 863427121 may have registration number 20000523 1015 0043 3811, meaning:

- it was registered on May 23, 2000 at 10:15 am;
- it was registered in registry 0043 as serial number 3811.

(f) Comments on professional negligence issues

(g) Impact of electronic registration

3. Searching the register

OPPSA ss 43, 43.1, 44

Z&D §§43.1-43.7, (43.1).1, 44.1-44.10 (pp. 343-368)

(a) The search options

(i) Individual debtor’s name index

- (1) Specific searches
- (2) Non-specific searches

(ii) Business debtor’s name index

(iii) Motor vehicle identification number (VIN) index

(b) Certified and uncertified (“verbal”) searches

(c) Search certificate contents

(d) Related search issues

(i) Used Vehicle Information Package (UVIP)

(ii) *Repair and Storage Liens Act* (RSLA)

(e) The Assurance Fund

(i) The test in s.44(4)

- *Bank of Nova Scotia v Clinton’s Flowers and Gifts Ltd.*, CB 164-166

(ii) The limitation on the Assurance Fund (ss.44(20) and (21))

4. Registration of security interests

(a) The financing statement

OPPSA s.45

OPPSA Regulation, s.3

Z&D §§45.1-45.8 (pp. 369-380)

- *Adelaide Capital Corp v Integrated Transportation Finance Inc.*, CB 190-198

(b) The registration period

OPPSA s.51

Z&D §§51.1-51.4 (pp. 444-449)

(c) Manner and effect of registration and effect of errors

OPPSA, s.46 (esp. 46(3), (4), (5))

Z&D §§46.1-46.16 (pp. 382-424)

(i) Tendering a financing statement for registration

(ii) Contents of financing statement

(iii) Collateral classification

- *Adelaide Capital Corp v Integrated Transportation Finance Inc.* (section 4(a) above)

(iv) Serial number requirements – Ontario and elsewhere

OPPSA Regulations, s.3(7)-(12)

APPSA Regulations (reproduced at end of this guide), definition “serial number goods”, s.34; also APPSA, s.35(4), Supp 409

(v) Errors or omissions in financing statement

- The objective test: *Re Lambert*, CB 168-179
- Dual search/registration criteria: *Re Lambert*, *Gold Key*, *Kelln* decisions discussed *passim* CB 179-180; *GMAC Leaseco Ltd. v. Moncton Motor Home & Sales Inc.* Supp 261
- System issues: “near-match” systems, Ontario’s non-specific search, serial number problems: *Coates v. General Motors Acceptance Corporation of Canada*, CB 184-189
- Wrong names and the name determination problem: *Charter Financial Co. v. Royal Bank*, Supp 259, as an example of name errors and how they can arise

5. Changes to registrations

OPPSA, ss 47-50, 52-53

Z&D, §§47.1-47.4, 48.1-48.9, 49.1-49.2, 50.1-50.2, 52.1-52.3, 53.1-53.2 (pp. 425-443 and 450-454)

- *Heidelberg Canada Graphic Equipment Ltd. v Arthur Andersen Inc.*, CB 200-207

6. Discharge of registration

OPPSA, ss 55-57

Z&D, §§55.1-55.3, 56.1-56.8, 57.1-57.5 (pp. 459-476)

7. Registration and subrogated rights

- *Re N'Amerix Logistix Inc.*, CB 210-217

TOPIC 5: PRIORITY RULES

Generally: CB c.6 (pp.239-269)

1. The general rules

OPPSA, s. 30

Z&D, §§30.1-30.8 (pp. 245-268)

CB 239-242

(a) Introduction

(b) Policy considerations

(c) Applications

2. Is notice relevant?

- *The Robert Simpson Company Limited v Shadlock and Duggan*, CB 242-244
- *In the Matter of Bruce A. Smith*, CB 245-249
- Commentary, CB 249-251

3. Further advances

OPPSA, ss 13, 30(3), (4)

Z&D §30.3 (p.256)

(a) Introduction

- *West v Williams*, CB 259-260

(b) Applications

- *James Talcott Inc. v Franklin National Bank of Minneapolis*, CB 251-256
- *Coin-o-matic Service Co. v. Rhode Island Hospital Trust Co.*, CB 261-267

(c) Policy considerations

4. Reperfected security interests

OPPSA, s. 30(6)

CB 268-269

Z&D §30.5 (pp.257-260)

TOPIC 6: THE PURCHASE-MONEY SECURITY INTEREST PRIORITY

Generally: CB c.7 (pp. 281-321)

1. Introduction

OPPSA, ss. 33, 1(1) “purchase money security interest”
Z&D §1.23 (pp. 26-36), §§33.1-33.9 (pp. 281-291)

(a) The issue

(b) Policy considerations

- (i) The new money theory
- (ii) The situational monopoly theory
 - Jackson and Kronman, CB 282-285

2. What is a purchase-money security interest?

- *North Platte State Bank v Production Credit Association*, CB 313-318
- *Agricultural Credit Corporation of Saskatchewan v Pettyjohn*, CB 286-289
- *Unisource Canada Inc. v. Laurentian Bank of Canada*, CB 290-293

3. Inventory purchase money security interests

OPPSA s.33(1)

- *Clark Equipment of Canada Ltd v Bank of Montreal*, CB 294-300
- *Chrysler Credit Canada Ltd. and Royal Bank of Canada*, CB 300-307

4. Non-inventory purchase money security interests

OPPSA s.33(2)

- *North Platte State Bank v Production Credit Association*, section 2 above
- *Brodie Hotel Supply Inc. v US*, CB 318-320

5. Competing purchase money security interests in the same collateral

OPPSA s.33(3)

TOPIC 7: FIXTURES, ACCESSIONS & COMMINGLED GOODS; SUBORDINATIONS

Generally: CB c.8 (pp. 323-354); c.6 (pp.269-280)

1. Fixtures, accessions and commingled goods

(a) Introduction

(b) Fixtures

OPPSA, ss. 34, 1(1) “goods”, “personal property”

Z & D §§34.1-34.2 (pp. 293-306); §1.13.1 (pp.17-18); §1.19 (p.23)

(i) Introduction

(ii) What is a fixture?

- Threefold classification of goods in respect of realty:
 - Goods attached to realty, but not enough to be a “fixture”
 - Goods “affixed” enough to be fixtures
 - Goods which have stopped being goods and become part of realty
- *Cormier v. Federal Business Development Bank*, CB 325-333
- *859587 Ontario Ltd. v. Starmark Property Management Ltd.*, CB 334-337

(iii) Priority of a security interest that attaches to goods before they become fixtures

(iv) Priority of a security interest that attaches to goods after they become fixtures

(v) Removal of collateral

(vi) Fixtures and circular priorities

- *GMS Securities and Appraisals Limited v. Rich-Wood Kitchens Limited*, discussed CB 338-340

(c) Accessions

OPPSA ss. 35, 1(1) “accession”

Z&D §35.1 (pp.308-310); §1.1 (pp.6-7)

(i) Introduction

(ii) What is an accession?

- *Industrial Acceptance Corp v. Firestone Tire & Rubber Co*, CB 341-345

(iii) The section 35 priority rules

(iv) Accessions and “repairs”

- *GMAC Leaseco Ltd. v. Tomax Credit Corp.*, CB 345-347

(d) Commingled goods

OPPSA s.37

Z&D §§37.1-37.4 (pp. 312-318)

(i) Introduction

(ii) Continuation of security interest in product or mass

(iii) Competing security interests in commingled goods

- *In the Matter of San Juan Packers, Inc.*, CB 347-350
- Grant Gilmore, *Security Interests in Personal Property*, CB 351-353

2. Subordinations

OPPSA s.38

Z&D, §§38.1-38.6 (pp. 319-324)

(a) Introduction

- Normal cases and terminology: “intercreditor agreements”, “waivers”, “no interest letters”, “subordination agreements”, “mutual subordinations”, etc.

(b) The privity issue: “in the security agreement or otherwise”

- *Chiips Inc v Skyview Hotels Ltd*, CB 269-279
- *Engel Canada Inc. v. TCE Capital Corp.* Supp 281

(c) Registration issue 1 – is the subordination a security agreement and “registrable”?

- *Chiips* case, above (discussion at CB 277); Z&D §38.6

(d) Registration issue 2 – how to reflect subordination in a registration

OPPSA s.50; OPPSA Reg. s.12

Z&D §§50.1-50.2 (pp. 442-443); §R12.1 (p.657)

TOPIC 8: LIENS ARISING BY STATUTE OR RULE OF LAW

Generally: CB c.9 (pp.355-380)

1. Introduction

OPPSA, s.4(1)(a)
Z&D §4.2 (pp.78-81)

2. Liens and competing security interests: the PPSA priority rules

(a) Introduction

(b) Liens and subordination of competing unperfected security interests

OPPSA, s 20(1)(a)(i)
• *Leavere v. Port Colborne (City)*, CB 365-370

(c) Liens for materials and services and competing security interests

OPPSA s.31
Z&D §§31.1-31.5 (pp. 269-276)
[Note: *Repair and Storage Liens Act* reproduced in Supp, 196 and following]

- *General Electric Capital Equipment Finance Inc. v. Transland Tire Sales & Service Ltd.*, CB 359-363

3. Liens and competing security interests: common law solutions

- *Leavere v. Port Colborne (City)*, above
- *Royal Bank of Canada v. Sparrow Electric Corp.*, CB 473-480 (discussed previously: Topic 3, Section 2(e))
- *DaimlerChrysler Financial Services (debis) Canada Inc. v. Mega Pets Ltd.*, CB 371-380

TOPIC 9: TRANSFERS IN THE ORDINARY COURSE OF BUSINESS; RIGHTS TO FOLLOW PROCEEDS

Generally: CB c.10 (pp.381-466)

1. Introduction

(a) The centrality of policy choices

2. Sales in ordinary course

OPPSA s.28(1)

Z&D §§28.1-28.2 (pp. 224-236)

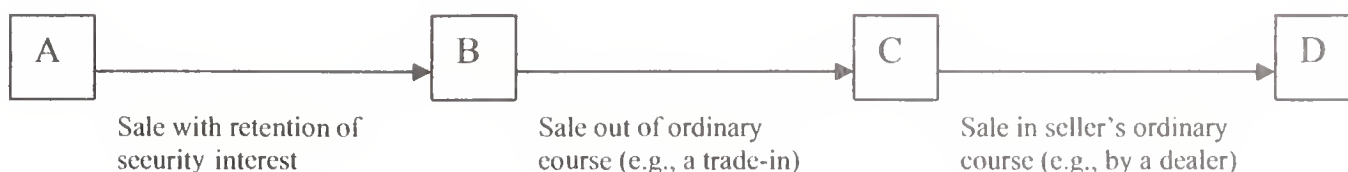
(a) Introduction

(b) “Buyer”

(c) “Goods”

(d) “Security interest... given by the seller”

- The “A-B-C-D problem”



(e) “Ordinary course of business”

- *Camco Inc. v. Olson Realty (1979) Ltd.*, CB 382-388

(f) Requirement for “sale”

- *Royal Bank of Canada v. 216200 Alberta Ltd.*, CB 390-396
- *Spittlehouse v. Northshore Marine Inc.*, CB 397-399 [see also recommendation no. 9 in PPSL Report 1998, Supp 340-342]
- *Tanbro Fabrics Corp. v. Deering Milliken Inc.*, CB 400-403

(g) Knowledge

(h) Leases in ordinary course

OPPSA, s.28(2)

Z&D §28.3 (p.236)

(i) Authorized dealing with collateral – s.28(1) and s.25(1)

- *Agricultural Commodity Corp. v. Schaus Feedlots Inc.*, Supp 295

3. Private sales of motor vehicles

OPPSA, ss. 25(1), 20(1)(c), 28(5), 43.1

- Z&D §28.6 (pp.240-242); §(43.1).1 (pp.353-354)

4. Transfers of instruments and documents of title

OPPSA ss. 28(4), 29, 1(1) “instrument”, “document of title”, “purchase”, “purchaser”

Z&D §28.5 (pp.239-240); §29.1 (pp.244-245)

- Ziegel extract, CB 406-411

(a) Introduction

(b) “Purchaser” (cf. “buyer”)

(c) “Perfected by registration”

(d) The section 28(4) requirements

- Value
- Without knowledge
- Possession

(e) Sections 28(4) and 29

5. Transfer of securities

OPPSA ss 28(6) and (7), 1(1) “security”

Z&D §28.7 (pp.242-244)

- Ziegel extract, CB 406-411
- Proposed *Uniform Securities Transfer Act* (to be discussed briefly in class; see also OSC website:

http://www.osc.gov.on.ca/MarketRegulation/SpecialProjects/pro_index.jsp#htusta)

6. Transfer of chattel paper

OPPSA, ss 28(3), 1(1) “chattel paper”

Z&D §28.4 (pp. 236-239)

- CB commentary, pp.411-412

7. The right to follow proceeds

(a) Introduction

- *Flintoft v. Royal Bank of Canada*, CB 413-416

(b) Perfection of security interests in proceeds

OPPSA ss 25(2)-(5), 30(5)
Z&D §25.4.10 (pp 213-215)

Five propositions respecting security interests in proceeds in OPPSA (reproduced from Z&D, above) :

(1) The security interest in the proceeds is automatically perfected if the security interest in the original collateral was perfected by registration at the time the proceeds claim arose. [s.25(2), first part]

(2) If the security interest in the original collateral was perfected otherwise than by registration, the secured party must perfect its security interest in the proceeds within 10 days after the proceeds arise. [s.25(4)]

(3) The secured party will have a continuously perfected security interest in the proceeds if (a) the security interest in the collateral was perfected by registration at the time the proceeds interest arose, and (b) in any other case, if the security interest in the proceeds is perfected within 10 days after the debtor acquires an interest in the proceeds. [s.25(2)-(4)]

(4) If there is no perfected security interest in the collateral when the debtor acquires an interest in the proceeds, the secured party must follow the normal perfection rules to perfect its security interest in the proceeds. [s.25(2), second part]

(5) Where the proceeds take the form of a vehicle, the secured party's interest is subordinated to the right of a buyer or lessee who buys or leases the vehicle as consumer goods unless the secured party has filed a timely financing statement that includes the vehicle identification number. [s.25(5)]

- *Massey-Ferguson Industries v. Bank of Montreal*, CB 417-420
- *Central Refrigeration & Restaurant Services v. CIBC*, CB 420-424

(c) Tracing of proceeds

OPPSA ss. 25(1), 1(1) "proceeds"
Z&D §§25.1-25.2 (pp.188-190); §§25.4.1-25.4.6 (pp.194-202)

- *Agricultural Credit Corp. of Saskatchewan v. Pettyjohn*, CB 428-434
- *Law Society of Upper Canada v. Toronto Dominion Bank*, CB 434-444
- *General Motors Acceptance Corp v. Bank of Nova Scotia*, CB 445-448
- *Flexi-Coil Ltd v. Kindersley District Credit Union Ltd*, CB 450-465

TOPIC 10: DEFAULT – RIGHTS AND REMEDIES

Generally: CB c.12 (pp.489-550)

1. Introduction

(a) Overview of OPPSA, Part V

(b) Prior law

(c) Other relevant laws

2. General provisions

OPPSA, ss.58-59, 1(1) “default”, “security agreement”
Z&D §§59.1-59.7 (pp. 479-493)

(a) Cumulative remedies

(b) Waiver or variation of rights and duties

(c) Default

(d) Procedural and substantive limits on the exercise of enforcement rights

(i) Notice before enforcement

- *Waldron v Royal Bank*, CB p. 489-495 (note discussion of *Lister v. Dunlop*)
- *Bankruptcy and Insolvency Act*, s.244 (text at Supp 27; discussed at CB 496-497 and Z&D §59.5 (pp.485-486))
- *Bank of Montreal v. Maple City Ford Sales (1986) Limited*, Supp 301 – a very long but interesting saga of enforcement and the vagaries of notice

(ii) Stay of secured remedies under bankruptcy laws

(iii) Consumer protection laws

(iv) Power of court to grant relief

OPPSA, s.67(1)

Z&D §§67.1-67.3 (pp.546-550)

3. Repossession upon default

OPPSA, ss. 62, 17

Z&D §§62.1-62.5 (pp. 506-512)

- *R. v. Doucette*, CB 498-502
- *Loewen v. Superior Acceptance Corp.*, CB 503-508
- *Rapid Transit Mix Ltd. v. Commcorp Financial Services Inc.*, CB 508-512

4. Disposal of collateral

OPPSA, ss 63, 67(2)

Z&D §§63.1-63.9 (pp. 515-528)

(a) The notice requirement

(b) Method of disposition

- *Copp v. Medi-Dent Services Ltd.*, CB 518-521

(c) Distribution of sale proceeds

(d) Effect of disposition of collateral

5. Secured party's collection rights: accounts, chattel paper, instruments

OPPSA, s.61

Z&D §§61.1-61.3 (pp. 504-505)

6. Surplus, deficiency; position of guarantors and lessors

OPPSA ss.64, 1(1) "obligation secured"

(a) Basic principles

Z&D §§64.1-64.5 (pp. 530-535)

(b) Guarantors

- *Bank of Montreal v. Charest*, CB 525-533 [subsequently aff'd by Div.Ct.: (2002), 60 O.R.(3d) 562]

(c) Lessors

- *Keneric Tractor Sales Ltd. v. Langille*, CB 544-549

7. Voluntary foreclosure

OPPSA, s.65

Z&D §§65.1-65.6 (pp.536-541)

- *Angelkovski v. Trans-Canada Foods Ltd.*, CB 515-517

8. Redemption and reinstatement

OPPSA, s.66

Z&D §§66.1-66.2 (pp.542-544)

9. Receivers

OPPSA, s.60

Z&D §§60.1-60.4 (pp.494-503)

- *Standard Trust Co. v. Turner Crossing Inc.*, CB 534-538
- *Ostrander v. Niagara Helicopters Ltd.*, CB 538-541

TOPIC 11: CONFLICT OF LAWS

Generally: CB c.4 (pp.143-158); c.12 (pp.550-554)

1. Introduction

Z&D §5.1 (p.91)

2. Security interests in goods – initial validity and perfection

OPPSA, s.5(1)

Z&D §§5.2-5.3 (pp. 91-95)

- *Re Claude A. Bedard*, CB 151-152

3. Relocation of goods to Ontario

OPPSA, s.5(2)-(4)

Z&D §5.4 (pp. 95-97)

- *Re Adair; Re General Motors Acceptance Corporation*, CB 145-151

4. Revendication

OPPSA, s.5(5)

Z&D §5.5 (pp. 97-98)

5. The destination of goods rule

OPPSA, s.6

Z&D §6.1 (p. 99)

6. Security interest in intangibles and mobile goods

OPPSA, s.7

Z&D §§7.1-7.3 (pp. 100-104)

- *Gimli Auto Ltd. v. BDO Dunwoody Ltd.*, CB 153-158
- *GMAC Commercial Credit Corp.-Canada v. TCT Logistics Inc.*, Supp 251

7. Enforcement of security interests

OPPSA, s.8

Z&D §§8.1-8.5 (pp. 105-110)

- *Cardel Leasing Ltd. v. Maxmenko*, CB 550-554

TOPIC 12: FEDERAL SECURITY INTERESTS AND RIGHTS IN INTELLECTUAL PROPERTY

Generally: CB c.13 (pp.555-584)

1. Introduction

2. *Bank Act*, s.427 [see Supp 1-8 for text]

(a) Overview of the *Bank Act* s.427 scheme

- Wood extract, CB 556-558
- *Royal Bank of Canada v. Sparrow Electric Corp.*, CB 558-559

(b) Relationship between *Bank Act* s.427 and PPSA

Z&D §2.1.4 (pp.52-55)

- *Bank of Nova Scotia v. International Harvester Credit Corp.*, CB 560-566
- *Royal Bank of Canada v. Moosomin Credit Union*, Supp 319

3. Security interests in intellectual property

- Wood extract, CB 568-572
- Duggan extract, CB 573-579

4. Security interests in ships

- Wood extract, CB 579-581

5. International developments

CB 581-584

English Law Commission, Consultation Paper No. 176 “Company Security Interests” (as reference only, see Part I, Introduction, pp.1-10) [available via Internet at: <http://www.lawcom.gov.uk/239.htm#cp176>]

6. Concluding remarks

